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NO.

In the Supreme Court of the United States

OCTOBER TERM, 1988

CREDIT BUREAU SERVICES — NEW ORLEANS, D/B/A CHILTON CORPORATION,
Petitioner,

VERSUS

WEELAND L. HYDE,
Respondent

PETITION OF CREDIT BUREAU SERVICES — NEW ORLEANS, D/B/A CHILTON CORPORATION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

(1) If a credit report is prepared and delivered to the plaintiff three years before he institutes his suit, can he prosecute a claim under the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.*, which has a two-year statute of limitations?

(2) Should a circuit court expand the Fair Credit Reporting Act's statute of limitations by holding, contrary to the language in the Act, that the statute of limitations is not governed by the date on which the credit report is issued? 15 U.S.C. §1681p.

(3) Can a circuit court legislate judicially by opining that the reissuance of the same credit report constitutes a separate and district tort, which triggers a new statute of limitations period?

DESIGNATED LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

(1) Weeland L. Hyde

(2) Hibernia National Bank of Jefferson Parish

(3) Credit Bureau Services — New Orleans d/b/a Chilton Corporation*

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* Borg-Warner Corporation is the parent company of Chilton Corporation; Borg-Warner Corporation is not a party to this proceeding.

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OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is reported at 861 F.2d 446 (5th Cir. 1988). The opinion of the district court is set forth in Appendix B.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on December 6, 1988. (*See,* Appendix A). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.*(1970), is the only statute that is the subject of this petition. The pertinent provisions of the Fair Credit Reporting Act are set forth in Appendix C, *infra.*

CONCISE STATEMENT OF THE CASE

On July 17, 1987, Weeland L. Hyde ("Hyde"), filed a lawsuit against Hibernia National Bank of Jefferson Parish ("Hibernia") and Credit Bureau Services-New Orleans d/b/a Chilton Corporation ("Chilton"), seeking pecuniary damages for alleged violations of the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.* ("FCRA"). Hyde also sought damages against Hibernia for breach of contract under Louisiana law. Hyde invoked jurisdiction under 28 U.S.C. §1441b by virtue of his claims under the Fair Credit Reporting Act and alledged pendent jurisdiction over the state law claims.

Hyde based his claims against Chilton on a credit report that Chilton issued; this report contained a reference to Hyde's loan with Hibernia. Hyde learned of the reporting of this credit information when he applied for a home loan in November, 1983. Pending processing of Hyde's home loan application, Chilton forwarded a copy of Hyde's credit report to the prospective lender and to Hyde, so that he could answer any questions the lender might pose. (*See,* Cover Letter Appended to Credit Report of Hyde dated November 11, 1983, which is reproduced in Appendix D). The November 11, 1983 credit report issued to the lender and delivered to Hyde that same month indicated that Hyde failed to pay Hibernia $452.00 on an outstanding

commercial loan and that in 1980, Hibernia classified Hyde's account as a "P&L" account.

After receipt of his credit report in 1983, Hyde telephoned Chilton to discuss the Hibernia credit information; pursuant to its standard procedures and in conformity with the Fair Credit Reporting Act, Chilton informed Hyde that he would have to submit his inquiry in writing. Hyde chose not to file a written request, for as he testified in his deposition, "it [the Hibernia entry] really wasn't that important to me at the time." Three years later, in November of 1986, Hyde applied for a Diner's Club credit card and was denied credit. Hyde then wrote to Chilton for the first time. In this communication, Hyde disputed the Hibernia credit information and requested a copy of his credit report. Chilton promptly complied with Hyde's request. The credit report sent by Chilton in December, 1986 contained exactly the same credit information which had been issued to the lender and received by Hyde in 1983. In 1987, more than three years after Hyde discovered the reporting of the Hibernia credit information, Hyde decided to sue both Chilton and Hibernia, based upon the credit report which he received in 1983, and which was reissued in 1986.

After taking Hyde's deposition, Chilton filed a motion for summary judgment, seeking the dismissal of Hyde's claims under the FCRA based upon the fact that his claims, arising out of a credit report prepared and issued in 1983, were time barred by the controlling two-year statute of limitations contained in the FCRA, 15 U.S.C. §1681p. The district court granted Chilton's motion for summary judgment. The district court concluded that Hyde's claims against Chilton were time barred as a matter of law. In support of its ruling, the district court observed that Hyde's claims against Chilton under the FCRA

stemmed from a credit report which was issued by Chilton in 1983 and which had been delivered to Hyde days thereafter. Since the challenged credit report was issued more than three years prior to the filing of Hyde's claim against Chilton and since Hyde read this report more than three years before he instituted this action, the district court properly concluded that Hyde's claims against Chilton under the FCRA were time barred.[1]

In derogation of the Fair Credit Reporting Act, the circuit court vacated the district court's judgment. Notwithstanding the fact that a credit report with the Hibernia credit information had been prepared and issued in connection with Hyde's home loan application in November, 1983, that Hyde had received a copy of his credit report with the Hibernia credit information in 1983, and notwithstanding Hyde's admitted knowledge in November, 1983, that the credit report contained credit information which he considered to be inaccurate, the Fifth Circuit concluded that Hyde's claim against Chilton, which was not filed until July, 1987, was not time barred by the FCRA's two-year statute of limitations.

In a ruling that lacks any statutory foundation, the Fifth Circuit modified, or at best, misconstrued the two-year statute of limitations in the Fair Credit Reporting Act. Instead of using the date on which a credit report is issued or the date on which the subject or user of the credit report received the report, the Fifth Circuit, overlooking legislative history and the explicit language in the Act,

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[1] Shortly afterwards, Hibernia filed a motion for summary judgment and a motion to dismiss for lack of jurisdiction in the district court. The district court granted Hibernia's motion for summary judgment for the same reasons it granted Chilton's motion. The district court also granted Hibernia's motion to dismiss Hyde's pendent state law claims on the basis that it should not exercise jurisdiction over the remaining state law claims.

decided that the statute of limitations should commence when a credit report causes injury to a consumer.

The Fifth Circuit's holding is statutorily and jurisprudentially infirm. Indeed, the decision issued by the circuit court is contrary to the FCRA and is in direct conflict with the rulings by other federal courts that have construed the FCRA's statute of limitations. The Fifth Circuit's ruling, if left uncorrected, will expand the FCRA's statute of limitations by judicial fiat, thereby allowing a consumer who has full knowledge of disputed credit information in his credit report to sit on his hands and do nothing until such time as credit is denied — which is precisely what Hyde did in this case. Under the Fifth Circuit's ruling, the FCRA's statute of limitations would simply know no bounds.

Besides its unfounded ruling with respect to the triggering of the statute of limitations, the Fifth Circuit imposed a continuing tort theory upon the FCRA's limitation. Specifically, the Fifth Circuit held that the reissuance of the same credit report is a separate and distinct tort, and thus under the circuit court's reasoning, a separate statute of limitations would run anew. In the absence of any statutory or decisional support under the FCRA, the Fifth Circuit nonetheless concluded that the re-transmission of the same credit report constituted a different tort. Regardless of its motivation, the Fifth Circuit's circumvention of the Act's statute of limitations lacks legal support. Chilton requests that this Court correct the circuit court's illogical deviation from the FCRA's statute of limitation's mandate. The Fifth Circuit's implicit imposition of a continuing liability theory contravenes the clear wording of the statute and eviscerates the limitations period Congress has enacted.

The Fifth Circuit's use of a different triggering mechanism for commencement of the FCRA's statute of limitations and its implicit recognition of a continuing liability theory cannot be reconciled with the clear wording of the FCRA. Simply stated, the Fifth Circuit's unprecedented ruling thwarts the FCRA's clear guidelines as to when an action under the FCRA is timely filed and expands the scope of the FCRA's statute of limitations far beyond that stated or even envisioned by Congress. It is from this erroneous and unprecedented ruling that Chilton seeks review by this Court.

STATEMENT OF FACTS

Chilton is a credit reporting agency which exists to facilitate consumer credit. In its capacity as a credit reporting agency, Chilton serves as a conduit to provide credit information to those businesses that contractually have requested access to Chilton's credit data on consumers. Under this contractual arrangement with Chilton, a company furnishes Chilton with credit information, including the payment history of the company's debtors. In turn, for authorized purposes, a subscribing company can receive credit information from Chilton, which includes the payment history of consumers with other subscribing companies. The contracts entered into between Chilton and subscribing companies, such as Hibernia, stipulate that the subscribing company vouchsafes for the veracity of the consumer credit information transmitted to Chilton.

On October 13, 1980, Hibernia's predecessor, First Metropolitan Bank, voluntarily furnished credit information to Chilton; this information indicated that a commercial loan in the name of Weeland L. Hyde had been charged to Hibernia's "P&L" category. In November, 1983, three years after Hibernia's predecessor had given this credit information to Chilton, Chilton prepared and issued a credit

report on Hyde to Harris Mortgage in connection with Hyde's home loan application. (*See,* Section Entitled "Inquiries" on 11/11/83 Credit Report in Appendix D). Chilton also sent a copy of this credit report to Hyde at the same time, so that Hyde could answer any questions posed by his prospective lender. (*See,* Cover Letter Appended to 11/11/83 Credit Report in Appendix D). The home loan was ultimately approved.

Upon receipt of his credit report in 1983, Hyde contacted Chilton by telephone regarding the Hibernia (First Metropolitan Bank) credit information. During his telephone conversation with Chilton, Hyde was specifically informed that in order to question credit information under the FCRA, he would have to do so in writing. Hyde chose not to file a written request and explained under oath: "it really wasn't that important to [me] . . . ."

After more than three years had elapsed since the receipt of his credit report in 1983, Hyde received another copy of his credit report in December, 1986. The credit report received by Hyde in December, 1986 contained the same Hibernia credit information which had been reported in credit reports issued both to Hyde and the prospective lender in 1983 - namely, that Hyde had a commercial loan which had been charged to "P&L". Hyde's receipt of the credit report in December, 1986 resulted from his letter to Chilton in November, 1986, in which Hyde disputed for the very first time the credit information relating to his Hibernia (First Metropolitan Bank) account.

Notwithstanding the fact that, as early as 1983, Hyde was cognizant that Chilton reported that he had a commercial loan from Hibernia (First Metropolitan) charged to "P&L" on his credit report, Hyde chose not to file suit until 1987, more than three years after a credit report had been issued reporting the challenged credit information and more than three years after Hyde had been put on notice that Chilton was reporting this credit information.

Having sat passively for more than three years after being apprised that Chilton was reporting the Hibernia credit information, the district court appropriately concluded that Hyde's claim against Chilton under the FCRA was barred by the applicable two-year statute of limitations, 15 U.S.C. §1681p. Indeed, the length of time Hyde was aware of the Hibernia credit information is not a contested issue. Hyde has conceded that he knew the contents of his credit report in November, 1983, which contained the credit information he now disputes. Notwithstanding Hyde's receipt of his credit report in 1983 and his concomitant discovery that it contained disputed credit information, Hyde deliberately delayed bringing suit against Chilton until July, 1987. Applying the most liberal statute of limitations allowed by the FCRA, the district court held that Hyde's claim was time barred.

On appeal, the Fifth Circuit rewarded Hyde for doing nothing for three years and inexplicably sanctioned the filing of an untimely claim. While finding that Hyde received a copy of his credit report in 1983 and that he contemporaneously knew that Chilton was reporting the Hibernia

credit information, the Fifth Circuit nonetheless concluded that Hyde's action was not precluded by the Act's two-year statute of limitations.

Pretermitting Hyde's knowledge about his Hibernia account, the Fifth Circuit opined that the FCRA's statute of limitations did not commence to run on Hyde's claim until Hyde's credit report was issued to a user who denied Hyde credit. In a totally unprecendented and unsupportable ruling, the circuit court concluded that the FCRA's two-year statute of limitations for negligent noncompliance can be triggered only when a consumer reporting agency issues a credit report to a user *and* that report causes injury to the consumer. Hence, under the Fifth Circuit's novel approach, the statute of limitations relating to Hyde's claims against Chilton did not commence until he was denied credit in November, 1986. This interpretation conflicts not only with the legislative purpose of the Act, but runs counter to the express language in the Fair Credit Reporting Act.

The end result of the Fifth Circuit's ruling is to expand the FCRA's statute of limitations far beyond what was envisioned by Congress. Such a strained construction should not be judicially sanctioned. Under the Fifth Circuit's rationale, since Hyde was not denied credit until 1986, the FCRA's statute of limitations would not begin to run until that time — even though he knew about the Hibernia account three years earlier. Besides contravening the Act, the Fifth Circuit's decision eviscerates the concept of a statue of limitations. If the circuit court's ruling is not corrected, the FCRA's two-year statute of limitations will be improperly expanded by judicial activism.

In addition to imposing an injury requirement for the commencement of the FCRA's statute of limitations, the Fifth Circuit endorsed a continuing liability theory, which would turn the FCRA's statute of limitations on its head. While finding that the credit report issued by Chilton on Hyde in 1986 contained exactly the same credit information as the report issued in connection with Hyde's home loan application in 1983 and received by him in 1983, the Fifth Circuit incongruously determined that the transmission of the same credit report constituted a separate and distinct tort to which a separate statute of limitations must apply. In the absence of any statutory or jurisprudential authority to support its unprecedented ruling, the Fifth Circuit concluded that the single publication rule had no application to the FCRA; to the contrary, the Fifth Circuit embraced the continuing liability concept despite its recognition that Chilton's second issuance of Hyde's credit report was a discrete event and was not a continuing act. Once again, the Fifth Circuit's ruling improperly extends the FCRA's statute of limitations. The Fifth Circuit's ill-conceived ruling should be rectified by this Court.

Chilton requests that this Court address two key issues concerning the FCRA's statute of limitations. First, whether the time for instituting a lawsuit under the FCRA commences upon date of injury, and second, whether the reissuance of the same credit report constitutes a separate and distinct tort that is subject to a separate statute of limitations. The circuit court's ruling contravenes the language of the FCRA and conflicts with the previously reported case law on these two issues. This Court has never addressed these issues and should now abrogate the erroneous ruling below.

In *Lawhorn v. Trans Union Credit Information Corporation*, 515 F. Supp. 19 (E.D. Mo. 1981) ["*Lawhorn*"],

the court directly confronted the issue of when the date of liability arises under §1681p of the FCRA and concluded that a consumer reporting agency's preparation of an erroneous or incomplete consumer credit report is a prerequisite to the triggering of liability. Accordingly, the date the FCRA's statute of limitations begins to run is the date that the erroneous credit report is issued. *Id.* at 20. In contradistinction, the Fifth Circuit in this case held that the FCRA's statute of limitations does not start until Hyde was denied credit, which was three years after Hyde received the credit report he challenges. Failing to follow decisional precedent, the Fifth Circuit ruled that the FCRA's statute of limitations cannot commence until the consumer is denied credit. The Fifth Circuit's approach plainly flies in the face of the FCRA.

In this case, the provision of the FCRA which purportedly was violated was Chilton's failure to use reasonable procedures to assure maximum possible accuracy in the preparation of Hyde's credit report. *See*, 15 U.S.C. §1681e(b). Under the clear wording of the FCRA's statute of limitations, any action to enforce liability created under the FCRA for non-compliance with this provision must be brought within two years from the date on which the liability arose, *viz*, the date Chilton prepared and issued Hyde's credit report in 1983. Notwithstanding the fact that the challenged credit report was prepared and issued by Chilton in 1983, the Fifth Circuit launched an artificial inquiry as to when it believed Hyde was injured by the credit report, which in this case, was three years after Chilton prepared and issued the credit report to Hyde. The Fifth Circuit's ruling distorts, if not alters, the limitation period in the Act. Absent any statutory foundation, the Fifth Circuit's opinion must be corrected.

The second major issue that should be addressed by this Court involves the Fifth Circuit's unwarranted imposition of a continuing liability theory on the FCRA's statute of limitations. Specifically, the core question is whether the transmission of the same credit report constitutes a separate and distinct tort to which a new statute of limitations must apply. Analysis of the FCRA's statute of limitations discloses that the statute is bereft of any continuing tort theory of liability. In this case, the circuit court acknowledged that Chilton's second issuance of the same credit report was not a continuing act, but tacitly applied the continuing tort theory of liability to circumvent the statute of limitations. This end-run by the Fifth Cirucit is proscribed by the unequivocal wording of the Act.

In *Lawhorn, supra,* the court emphatically rejected the concept of a continuing violation theory; the court determined that it could not conclude that the violations alleged under the FCRA constituted continuing violations. *Lawhorn,* 515 F. Supp. at 20. Similarly, in *Clay v. Equifax,* 762 F.2d 952 (11th Cir. 1985) ["Clay"], the Eleventh Circuit stated that reissuance of the same credit report could not be construed as a violation of the FCRA's failure to use reasonable procedures in preparing credit reports, since transmission of an existing credit report did not constitute preparation of a new report. *Clay,* 762 F.2d at 959. In this case, the Fifth Circuit recognized that Chilton's second issuance of Hyde's credit report could not be a continuing act; nonetheless, the Fifth Circuit sought to dodge the Act's statute of limitations by holding that reissuance of an erroneous credit report constitutes a new separate violation of the FCRA.

In taking its novel position that transmittal of the same credit report constitutes a separate and distinct infraction, the Fifth Circuit carved out another exception to the FCRA's statute of limitations. Such an approach is contrary to this Court's long-standing principle that where Congress has enunciated a statutory exception additional exceptions are not to be implied. The Fifth Circuit's crafting of this broad exception to the FCRA's statute of limitations renders meaningless the exceptions which Congress has specified in the Act. *See, Houghton v. Insurance Crime Prevention Institute,* 795 F.2d 322, 323 (3d Cir. 1986). It is respectfully submitted that the Fifth Circuit's erroneous ruling on this issue must be corrected by this Court and the inter-circuit conflict should be resolved.

The Fifth Circuit's ruling re-writes the FCRA's two-year statute of limitations. In short, the circuit court's expansion of the Act contravenes the straightforward language of the FCRA and usurps the legislative role. Beyond the conflict among circuits, the erroneous decision by the Fifth Circuit has a disproportionately adverse effect upon jurisprudential interpretation of the FCRA's statute of limitations because of the paucity of case law in this area.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's unsubstantiated construction of the FCRA's statute of limitations vitiates the clear wording of the Act and represents a glaring instance of a circuit court by-passing legislative intent. It is important for

this Court to grant certiorari review in order to resolve the conflict, caused by the Fifth Circuit's ruling, as to when the statute of limitations under the FCRA commences. More specifically, this Court should grant the present application for review because:

(1) **The Court Below Erroneously Found that a Claim Against a Credit Reporting Agency for Negligent Non-Compliance with the Fair Credit Reporting Act was not Barred by the Act's Two-Year Statute of Limitations, Notwithstanding the Claim was Predicated upon a Credit Report Which Was Prepared and Issued Three Years Prior to Filing Suit and Notwithstanding the Fact that the Plaintiff Discovered the Reporting of the Purportedly Erroneous Credit Information More Than Three Years Prior to Filing Suit.**

The findings presented in the courts below, specifically Hyde's own testimony, establish that Hyde's action against Chilton is time barred as a matter of law. The pivotal question is whether Hyde's lawsuit against Chilton is precluded by virtue of the FCRA's two-year statute of limitations. It is. Indeed, the facts irrefutably demonstrate that a credit report containing the challenged credit information was issued by Chilton to a potential lender in connection with Hyde's home loan application in 1983, that Hyde simultaneously received a copy of this credit report in 1983, and that Hyde was aware of the reporting of the purportedly erroneous credit information in 1983. Based on these facts, it is beyond cavil that Hyde's action against Chilton, filed in 1987, is time barred by the FCRA's two-year statute of limitations. Clearly, the Fifth Circuit erred by concluding that Hyde's claim is not precluded by the statute of limitations. A review of the FCRA's statute of limitations and the interpretative

jurisprudence thereunder against the facts of this case will permit no other conclusion.

The Fair Credit Reporting Act's statute of limitations provides that:

> An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under the subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

FCRA, 15 U.S.C. §1681p. (*See,* Appendix C).

The FCRA imposes civil liability for both willful and negligent non-compliance with any requirement imposed under the Act. Specifically, 15 U.S.C. §§1681n and 1681o address respectively liability for willfull and negligent failure to comply with the Act. *See,* Appendix C. In this case, Hyde alternatively alleged that Chilton intentionally and negligently failed to comply with the FCRA in the preparation of credit reports. In order to sustain his statutory burden of proof, Hyde must establish that Chilton did not employ reasonable procedures in the preparation of its credit report. Section 1681e(b) of the Act states:

> Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

Under the FCRA, the preparation of a credit report without following reasonable procedures would constitute statutory non-compliance, so as to trigger liability within the meaning of the FCRA's statute of limitation. Thus, it is plain that in the context of a claim for negligent non-compliance the focus must be the date the credit report was prepared and issued in determining whether a credit reporting agency can be subject to a claim under the FCRA; similarly, when an intentional violation of the Act is alleged, the determinative date is when the consumer learned of the reporting error.

The question of when liability arises under the FCRA and the corrollary issue of when the statute of limitations begins to run was squarely addressed by the Court in *Lawhorn, supra.* In *Lawhorn,* the plaintiff's claims were based on the defendant's purported violation of 15 U.S.C. §1681e(b). the same provision relied upon by Hyde in this action. The plaintiff contended that the defendant failed to follow reasonable procedures in the preparation of the plaintiff's credit reports. After reviewing the FCRA's statute of limitations, the Court concluded that a consumer reporting agency's preparation of an erroneous or incomplete consumer credit report is a statutory prerequisite to the imposition of liability under the FCRA and accordingly, the date the FCRA's statute of limitations commences is the date when the defendant's practices lead to the preparation of an erroneous or incomplete consumer report. *Lawhorn,* 515 F. Supp. at 20. As noted by the Court

in *Lawhorn*, a credit report which is prepared without following reasonable procedures would constitute non-compliance with the requirements of the FCRA; therefore, the date that report is prepared and issued would set in motion the running of the statute of limitations. *Id.*

In the instant case, the district court correctly concluded that under the rationale of *Lawhorn*, which is buttressed by the clear wording of the FCRA's statute of limitations, Hyde's claims against Chilton for both negligent and willful non-compliance with the FCRA's requirement to use reasonable proceedures in the preparation of a credit report is time barred. As articulated by the district court, it is undisputed that in November of 1983, Hyde received a copy of his credit report. A review of the credit report received by Hyde in November of 1983, (*see* Appendix D) indicates that the credit report was both prepared and issued in November of 1983. Additionally, a review of the listings under the section entitled "Inquiries Last Two Years" indicates that Hyde's prospective home lender, Harris Mortgage, was issued a credit report on Hyde at the same time Hyde received his credit report in November of 1983.

The district court specifically noted that Hyde received a copy of his credit report in connection with the issuance of a credit report to a potential lender to process Hyde's home loan application. (*See*, Opinion of District Court in Minute Entry dated February 24, 1988, set forth in Appendix B). These findings of fact by the district court were not disturbed by the Fifth Circuit on appeal. In sum, it is undisputed that a credit report on Hyde containing the disputed Hibernia credit information was (1) prepared and issued by Chilton in November of 1983, (2) sent to a potential lender in 1983, and (3) received by Hyde in November of 1983.

Under the rationale of *Lawhorn* and under the clear wording of the FCRA's statute of limitations, Hyde's claims against Chilton for intentional or negligent non-compliance with the FCRA's requirement that a consumer reporting agency use reasonable procedures to assure maximum possible accuracy in the preparation of credit reports are untimely. Since the consumer report was prepared and delivered to Hyde more than three years before Hyde filed this lawsuit, it is beyond peradventure that Hyde's claims against Chilton were belatedly filed and should be barred in accordance with the Act's statute of limitations.

The language used by Congress in drafting the FCRA's statute of limitations is noteworthy. The wording of the FCRA reflects congressional intent as to when the statute of limitations under the FCRA will commence, namely, when liability arises under the Act, which is the date when a consumer reporting agency prepares the credit report. If Congress had intended that the FCRA's statute of limitations starts only upon occurrence of injury, it would have so provided in the Act -- but Congress chose a different starting date. If injury is to be added as a triggering mechanism for commencement of the FCRA's statute of limitations, it should be done by congressional action and not by judicial intervention. *See, Houghton v. Insurance Crime Prevention Institute, supra*, 795 F.2d at 325.

Because the district court found that Chilton prepared and issued a credit report on Hyde containing the challenged credit information in November of 1983, that this credit report had been issued to a prospective lender in November of 1983, and that Hyde discovered the reporting of this challenged credit information in November, 1983, the Fifth Circuit should have gone no further, other than to affirm the judgment of the district court. By injecting

the prerequisite of injury and the concept of continuing liability into the FCRA's statute of limitations, the Fifth Circuit has created a jurisprudential aberration, which should be expurgated.

(2) This Case Raises Res Nova Questions as to When the Fair Credit Reporting Act's Statute of Limitations Commences and Whether it Can be Judicially Extended.

Since the enactment of the FCRA nineteen years ago, no court, except the Fifth Circuit's decision in the instant case, has extended the FCRA's statute of limitations by requiring injury as a prerequisite to commencement of the statute of limitations. The Fifth Circuit's decision to tack injury onto the FCRA's statute of limitations lacks any legal support. Judicial interpretation of the FCRA's statute of limitations is an important question of federal law which has not been, but should be, settled by this Court. While commentators in the consumer credit field have noted the difficulty in determining the start date for the FCRA's statute of limitations and the concomitant question of whether there is continuing liability under the Act, none of these commentators have endorsed the singular view espoused by the Fifth Circuit.

According to two of the leading commentators who have addressed this subject, four possible trigger dates exist for triggering the FCRA's statute of limitations:

(1) the date of the consumer reporting agency's actual unreasonableness;

(2) the date the erroneous credit report is issued;

(3) the date that would trigger the state law statute of limitations; or,

(4) the date of receipt of the credit agency's report.[2]

Commentators on the FCRA statute of limitations generally agree that of the four trigger date possibilities, the date of issuance "comports with the remedial purpose of the FCRA in that it does not foreclose a party's rights before he or she has had any opportunity to detect a violation, because at the time of issuance, any error or negligence is at least susceptible of discovery." Davis, 18 Ind. L. Rev. at 513. One commentator, who has assiduously studied the Act, has concluded that "the only date recognized as the trigger date for a negligent violation of the FCRA is the date of issuance of a violative report." Clontz, Fair Credit Reporting Manual at ¶2.07[2][b].

Davis has suggested that receipt of the credit report should trigger the FCRA limitations. *See,* Davis, *supra.* Receipt of the credit report as the trigger date for the FCRA limitations period is predicated on the supposition that a credit report is not complete until it is published and disseminated to a lending institution. As noted by Davis,

> [T]he receipt test maximizes the number of claims which fall within the language of the FCRA's limitations provision without significantly increasing the danger of stale claims . . . this approach draws support from the legislative record and the commercial defamation analogy . . ., which stipulates that publication is complete upon receipt of the credit report.

Davis, 18 Ind. L. Rev. at 515 (footnotes omitted).

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[2] *See,* Davis, *Solving Statute of Limitations Problems Under Fair Credit Reporting Act,* 18 Ind. L. Rev. 507, 511 (1985) [hereinafter "Davis"]; *see also,* Clontz, *Fair Credit Reporting Manual,* ¶2.07[2][a] (1988 Cumulative Supp.).

Hence, under one approach, the cause of action for negligent non-compliance should accrue and the statute of limitations commence the moment a potential lender receives the credit agency report. *Id.* at 516.

While purporting to rely upon the so-called receipt test, the Fifth Circuit added a separate, albeit unsupportable, requisite by insisting that the complainant sustain an injury in order to commence the FCRA's statute of limitations for negligent non-compliance. *Hyde,* 861 F.2d at 449. No other court and none of the commentators have suggested using the novel construction embraced by the Fifth Circuit. Indeed, if the Fifth Circuit had followed the so-called receipt test, it would have been compelled to affirm the district court's judgment dismissing Hyde's suit, since the facts irrefutably demonstrate that a credit report was received by a potential lender in November, 1983. (*See,* Opinion of District Court in Minute Entry dated February 24, 1988 set forth in Appendix B). The district court's finding that a credit report was issued to a potential lender in November, 1983 was not disturbed by the Fifth Circuit on appeal. Notwithstanding these undisputed facts, the Fifth Circuit concluded that Hyde's three-year old claims were not impacted by the Act's two-year statute of limitations.

The Fifth Circuit's conclusion that Hyde's claims were not barred under the FCRA's statute of limitations was bottomed upon the Fifth Circuit's unique criteria that there be an injury to trigger the limitations period, and the circuit court's implicit recognition of continuing liability. As stated by the Fifth Circuit,

> [t]he final issue is whether, if the 1983 report did cause damage to Hyde and the statute of limitations had run for that cause of action, Hyde is

> barred from seeking damages for the *later issuance of the same report.*

Hyde, 861 F.2d at 449 (emphasis added).

While conceding that Chilton's second issuance of a credit report on Hyde in 1986 was not "a continuing act, . . ., but was a discrete event," the Fifth Circuit nevertheless concluded that each transmission of the same report could constitute a separate violation which would be governed by a new two year period. As stated by the Fifth Circuit:

> [I]f Hyde was, indeed, injured in 1983, the 1983 and 1986 injuries constituted two distinct harms: Hyde would have been denied a particular credit in 1983 and denied another line of credit in 1986. While each injury resulted from Chilton's transmission of the same erroneous credit files, Chilton's later action inflicted a new injury on Hyde.

Id. at 450.

Just like its appendage of the injury factor to the FCRA's statute of limitations, the Fifth Circuit's conclusion that reissuance of the same credit report constitutes a separate violation is without precedent or statutory support. In *Clay v. Equifax, supra,* 762 F.2d 952, the Eleventh Circuit stated that reissuance of the same credit report cannot be deemed to be a violation of the FCRA's mandate that a consumer reporting agency use reasonable procedures in preparing credit reports, since *no new report is prepared.* In mailing copies of previously prepared reports, the Eleventh Circuit emphasized that the consumer reporting agency was preparing no new or subsequent reports. The approach taken by the Eleventh Circuit comports with the clear wording of the FCRA's requirement that a con-

sumer reporting agency follow reasonable procedures to ensure maximum possible accuracy in the *preparation* of credit reports. Undoubtedly, if a credit report is merely reissued, a consumer reporting agency is preparing no new reports, but merely mailing copies of previously prepared ones. In a like vein, the court in *Lawhorn, supra,* refused to view FCRA violations as continuing ones so as to extend the limitations period under the Act. *See, Lawhorn,* 515 F. Supp. at 20. Chilton respectfully submits that the reasoning of the courts in *Clay* and *Lawhorn* is correct. Because the Fifth Circuit's ruling clashes with this case law, it is respectfullly submitted that this Court should grant certiorari to resolve this conflict.

If the Fifth Circuit's ruling is not corrected, another exception to the FCRA's statute of limitations will be created besides those selected by Congress. It has long been the practice of this Court to avoid implying additional exceptions other than those Congress has statutorily prescribed. As stated by this Court, "additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Construction Co.,* 446 U.S. 608, 616-17 (1980); *accord, Rylewicz v. Beaton Services, Ltd.,* 698 F. Supp. 139 (N. D. Ill. 1988).

In the instant case, the FCRA's statutory language clearly evidences congressional intent and the imposition of a continuing violation theory should be made applicable, if at all, by congressional action and not by judicial intervention. If the Fifth Circuit's ill-founded and lone approach that reissuance of the same credit report constitutes a separate violation of the Act subject to a new separate statute of limitations is allowed to stand, the FCRA's statute of limitations will be eviscerated. The judicial activism of the Fifth Circuit in affixing additional requirements onto the FCRA's statute of limitations is unwarranted and should be rectified by this Court.

(3) The Decision Below has Pervasive Ramifications on Limitations Clauses and Specifically has the Effect of Rewriting the Fair Credit Reporting Act's Statute of Limitations.

Under the Fifth Circuit's decision, even if a credit report is issued to a user and even if the consumer has contemporaneous knowledge that the credit report contains inaccurate credit information, the FCRA's statute of limitations is held in abeyance until such time as that individual is denied credit. According to the Fifth Circuit, an individual who has direct knowledge of erroneous credit information in his credit report but chooses to do nothing will not be subject to the Act's statute of limitations until credit is denied. Such an anomalous result contavenes *sans* authority §1681p of the FCRA -- a statute of limitations which has been carefully drafted by Congress. It is well-settled that statutes of limitations are products of legislation, carefully drafted to militate against unnecessary delay in filing suit, so that the mere passage of time neither aids nor hinders either party. *See, United States v. Kubrick,* 444 U.S. 111, 117 (1979) ["*Kubrick*"]. As this Court observed in *Kubrick,* "[s]tatutes of limitations . . . represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that 'the right to be free of state claims in time comes to prevail over the right to prosecute them.' " (citation omitted). The Fifth Circuit ignored this basic tenet and arbitrarily engrafted the prerequisite of injury and the concept of continuing liability onto the FCRA's statute of limitations, thereby thwarting congressional intent as to when FCRA claims may be brought.

Moreover, the Fifth Circuit's ruling would encourage posturing. The Fifth Circuit's decision permits an individual, who knows of an apparent error in his credit

report, to sit on his hands while the credit reporting agency continues to re-issue the same erroneous credit report, in which each credit report would trigger a new statute of limitations period. This resultant contravenes the language as well as the spirit of the FCRA. Under this scenario, the FCRA's statute of limitations could be endless. The Fifth Circuit's radical interpretation of the FCRA's statute of limitations expands the time for instituting a lawsuit far beyond that expressed or envisioned by Congress.

Congress legislatively recognized that the statute of limitations for negligent non-compliance would commence two years from the date on which liability arises under the Act. Additionally, the plain language of the Act demonstrates congressional intent to permit tolling of an FCRA action only in a precisely defined situation, *i.e.*, in the case of material and willful misrepresentation by a consumer reporting agency of information required to be disclosed under the Act. *See,* 15 U.S.C. §1681p (Appendix C). In the case of a willful violation, the time begins to run from the date the consumer learned of the error. While there is no injury prerequisite as to the commencement of the statute of limitations and the Act does not suggest that continuing liability is an exception to timeliness, the Fifth Circuit has nonetheless attached both exceptions to the statute, thereby rendering superfluous the exceptions which Congress enacted. *Houghton v. Insurance Crime Prevention Institute, supra,* 795 F.2d at 325. The Fifth Circuit should not be permitted to usurp the legislature's role. The FCRA's statute of limitations reflects a balance sought by Congress in the context of claims against a credit reporting agency. *Kubick,* 444 U.S. at 117. The Fifth Circuit should not be permitted to defeat this congressional purpose, which is to encourage the presentation of claims within two years from the date on which liability arises or, within two years from discovery of the erroneous credit in-

formation if a willful violation of the Act is alleged. If additional exceptions are to be imposed on the FCRA, it should be done by congressional action, not the courts. Because the Fifth Circuit's ruling eviscerated the FCRA's statute of limitations by imposing additional exceptions where none are needed, this Court should review the error-laden decision below.

CONCLUSION

The Fifth Circuit's ruling has the drastic effect of rewriting the Fair Credit Reporting Act's statute of limitations. The findings by the district court, which were not disturbed by the circuit court on appeal, that a credit report on Hyde was prepared and issued to a potential lender in November, 1983, and that Hyde received a copy of this credit report at the same time, precludes Hyde's claim against Chilton as untimely, as the district court properly concluded. The Fifth Circuit's imposition of injury as a triggering mechanism for commencement of the FCRA's statute of limitations, cojoined with its implicit recognition of continuing liability, contravenes the clear wording of the FCRA's limitations provision. This Court has long recognized that statutes of limitations are not mere technicalities, for they are fundamental to a well-ordered judicial system. *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980). If the Fifth Circuit's unprecedented ruling is not rectified, the statute of limitations, which was carefully drafted by Congress, will be thwarted, Such an anomaly not only impacts the FCRA but undermines the basic concept of statutes of limitation.

Chilton respectfully requests this Court to grant its petition for a writ of certiorari in order to clarify the statutory parameters of the FCRA's statute of limitations.

The important question of when the FCRA's statute of limitations commences and the concomitant issue of the applicability of continuing liability under the FCRA are important questions of federal law which have not been, but should be, settled by this Court. The unprecedented and erroneous resolution of these issues by the Fifth Circuit warrants correction and calls for an exercise of this Court's power of supervision.

Respectfully submitted,
PHELPS DUNBAR MARKS
CLAVERIE & SIMS

By: _____

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ATTORNEYS FOR PETITIONER,
CREDIT BUREAU SERVICES –
NEW ORLEANS, D/B/A CHILTON
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th day of March, 1989, served three copies of the foregoing petition upon the following, by placing same in the United States mail, properly addressed and first class postage prepaid:

(1) Counsel for Plaintiff,
Weeland L. Hyde

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New Orleans, Louisiana 70114

(2) Counsel for defendant,
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New Orleans, Louisiana 70112-2392

HARRY A. ROSENBERG

APPENDIX A

Weeland L. HYDE, Plaintiff-Appellant,

HIBERNIA NATIONAL BANK IN JEFFERSON PARISH and Credit Bureau Services—New Orleans, d/b/a Chilton Corporation, Defendants-Appeles.

No. 88-3292

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Dec. 6, 1988.

Action was brought against credit reporting agency for violation of Fair Credit Reporting Act. The United States District Court of the Eastern District of Louisiana, Robert F. Collins, J., dismissed suit as time barred, and appeal was taken. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held that limitations period for Fair Credit Reporting Act suit alleging negligence commences when report issued to user causes injury to consumer for whose protection Act was adopted.

Vacated and remanded.

Vallerie Oxner, New Orleans, La., for Hyde.

Harry A. Rosenberg, M. Nan Alessandra, New Orleans, La., for Credit Bureau Services.

J. Paul Demarest, Edward J. Rivera, New Orleans, La., for Hibernia Nat. Bank.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before RUBIN, GARWOOD, and DAVIS, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

[1] The issue is when the statutory limitations provisions of the Fair Credit Reporting Act begin to run. We hold that the limitations period for a suit asserting negligence commences when a report issued to a user causes injury to the consumer for whose protection the Act was adopted and that the limitations period for a suit asserting intentional violation of the Act begins at the same time or, if the consumer is not aware of the issuance of the report, when the consumer later discovers it. Accordingly, we vacate a summary judgment and remand for further proceedings in which these principles can be applied.

I.

In November, 1983, Weeland Hyde received a credit report from the Credit Bureau Services-New Orleans, d/b/a Chilton Corporation, indicating that Hyde had failed to pay Hibernia National Bank $452 on an outstanding commercial loan, and that Hibernia, in 1980, had charged that amount to "P & L", writing it off as a bad debt. After receiving this credit report, Hyde telephoned Chilton to state that the information relating to the Hibernia loan was incorrect. Chilton informed Hyde that to question credit information under the Fair Credit Reporting Act he would have to lodge a written request. Hyde chose not to do so because, as he testified in his deposition, "it really wasn't that important to me at the time."

Three years passed. In 1986, Hyde applied for a Diner's Club credit card and was turned down. He then wrote to Chilton for the first time, disputing the credit information that had been submitted by Hibernia, and asked for a copy of his credit report. Chilton sent him a copy of it in December, 1986. It contained exactly the same credit information that had been submitted by Hibernia in 1980 and reported to Hyde in 1983.

In July, 1987, Hyde sued Hibernia and Chilton, alleging that they had intentionally violated the Fair Credit Reporting Act. The district court apparently also understood the complaint to assert that Hibernia and Chilton had negligently violated the Act. Hyde also asserted pendent state-law claims. Each of the defendants filed a motion for summary judgment against Hyde on the basis that the statue of limitations barred assertion of the federal claims.

The district court held that, under what it called the "occurrence rule," the federal negligence claims were time-barred because the alleged wrongful report was issued more than two years before suit was brought. Under the alternative "discovery rule," the claims alleging intentional violation of the Act were also barred because suit had not been brought until more than two years after Hyde had discovered the allegedly willful misrepresentation. Accordingly, the district court dismissed the federal claims, and then dismissed Hyde's pendent state-law claims for want of federal jurisdiction.

II.

Congress enacted the Fair Credit Reporting Act in 1970 to require that "consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce

for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information . . . ."[1] The statute imposes significant responsibilities on credit reporting agencies. It limits the uses for which a consumer credit report may be released[2] and provides a flow chart for challenging the accuracy of a report.[3] A consumer may, by written notice to the reporting agency, challenge any information contained in his file. If he does so, the agency must reinvestigate the credit report.[4] If the information is then confirmed, the consumer may file a statement of a dispute, and any disputed information will be noted as such in forthcoming reports.[5] The agency must also inform the consumer of any information deleted from his report.[6]

The Act requires each credit reporting agency to maintian "reasonable procedures" and to exert a "reasonable effort" in reporting and verifying consumer information,[7] but it does not authorize a suit simply to require the credit reporting agency to correct an erroneous credit report. Instead, it permits any consumer who is injured by the negligent failure of a reporting agency to com-

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[1] 15 U.S. C. §1681(b) (1982)

[2] Id. at § 1618b.

[3] Id. at § 1681i.

[4] Id. at § 1681i(a).

[5] Id. at § 1681i(b)-(c).

[6] Id. at § 1681i(d).

[7] Id. at §§ 1681(b) and 1681e(a).

ply with any requirement imposed by the Act to sue for the actual damages sustained by the consumer as a result of the failure, together with the cost of the action and reasonable attorney's fees.[8] An agency that willfully fails to comply with any requirement imposed by the Act is liable in addition for punitive damages.[9]

The Act vests jurisdiction of such actions in federal courts.[10] It requires that any action to enforce any liability created by the Act be brought "within two years *from the date on which liability arises,* except that where a defendant has materially and willfully misrepresented any information . . .the action may be brought at any time within two years after discovery by the individual of the misrepresentation."[11]

III.

The FCRA statute of limitations must be read

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[8] Id. at § 1681o.

[9] Id. at § 1681n.

[10] Id. at § 1681p.

[11] (Emphasis added). 15 U.S.C. § 1681p reads in full:

> "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years from the date on which liability arises, except that where a defendant has materially and willfully misrepresented any information required under the subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation."

against the background of principles applicable to the limitation of actions for tort liability. Such statutes of limitations do "not usually begin to run until the tort is complete."[12] Actual loss or damage to the interests of another is, at least, a component of the cause of action based on negligence,[13] and, in the absence of some other measure of damages, of intentional wrongs as well. Proof of damage is thus an essential part of the plaintiff's case. Nominal damages to vindicate a technical right cannot be recovered unless actual loss has occurred.[14]

The view has been expressed that the FCRA two-year period for actions based on negligence might begin to run from any of four dates:

> (1) When the event that would trigger the limitations period under state law occurred;
>
> (2) When the agency committed the act of negligence, that is, in the statutory language, when it failed to employ "reasonable procedures,"[15]
>
> (3) When the report was first received by or made known to the consumer,[16] or

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[12] Restatement of Torts § 899 Comment C.

[13] Prosser and Keaton on Torts, § 30 at 165 (5th Edition 1984).

[14] Ibib.

[15] 15 U.S.C. §§ 1681(b) and 1681e(a). *See also Koropoulos v. Credit Bureau, Inc.* 734 F.2d 37, 41-42 (D.C.Cir.1984).

[16] Davis, Solving Statute of Limitations Problems Under Fair Credit Reporting Act, 18 Ind.L. Rev. 507, 514 (1985).

(4) When the agency issued the erroneous report to a user.[17]

Adopting a state-by-state approach would produce anomalous results in the application of a federal law that provides its own statute of limitations and is intended to have uniform national application. Although we adopted a state-by-state approach in *Wilson v. Retailo Credit Co.*,[18] that case concerned defamation in a credit report, not a violation of the Act.

To commence the period with the agency's negligent procedures would start the statute before any report is issued, and hence before the consumer can even become aware of the very existence of a cause of action. Such an interpretation would obviously frustrate the purpose of the Act.

Starting the statute of limitations upon the consumer's receipt of the report would also frustrate the purpose of the damage action. A consumer may learn that a credit agency possesses erroneous information in its files, but he has no cause of action in tort against the credit agency until the agency somehow injures him. The statute does not allow suit against the credit agency for creating, possessing, or revealing to a consumer credit files containing erroneous information, but establishes a cause of action to redress specific injuries sustained by the consumer.

The requirement that a consumer sustain some injury in order to establish a cause of action suggests that the statute should be triggered when the agency issues an erroneous report to an institution with which the consumer

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[17] See, e.g. *Lawhorn v. Trans Union Credit Information Corp.*, 515 F.Supp. 19 (E.D.Mo.1981) (memo).

[18] 438 F.2d 1043, 1045 (5th Cir.1971).

is dealing. One commentator, Professor Martha Davis, has advanced this thesis,[19] drawing an analogy to the common law rule in commercial defamation cases. Professor Davis culls support from the congressional debates that emphasize the link between adverse publication and harm to the consumer.[20] The day the report is transmitted to a user is usually the date on which injury is inflicted, since that report is used by the institution as the basis for its denial of credit to the consumer. Because the tort is inchoate until the victim is injured, the date upon which the erroneous information is transmitted by the credit agency to the potential user corresponds to the date on which the limitations period for the tort begins.

When the claim is for intentional non-compliance, the period commences either from the time of injury to the consumer or from the date of the consumer's discovery of the error, whichever is later. Congress intended the discovery provision to extend the period within which suit might be filed for an intentional tort beyond the two-year period provided for negligence. That purpose is manifested in the Senate-House Conference Committee Report on the Act which states:[21].

> The House amendment to section 618, which was agreed to by the conferees, would stop the statute of limitations from running, where the defendant has willfully misrepresented any information required under the new title which is material to the establishment of the defendants' liability, until

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19 *Davis, supra,* 18 Ind.L.R. at 524.

20 *Ibid.*

21 Conference Report No. 1587, 91st Cong.2d Sess. reporting on H.B. 91-1587, 1970 U.S.Code & Ad.News 4394, 4411, 4416.

discovery by the individual of the misrepresentation.

IV.

The final issue is whether, if the 1983 report did cause damage to Hyde and the statute of limitations has run for that cause of action, Hyde is barred from seeking damages for the later issuance of the same report. Hyde contends that, even if he was injured in 1983, his cause of action nonetheless survives because Chilton's violation of the Act was continuous.

In *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*,[22] the Supreme Court found a statute of limitations no bar to suit when a "continuing violation. . .inflicted continuing and accumulated harm" on a party. Chilton's second issuance of the report was not, however, a continuing act, like the constant repetition of a nuisance, but was a discrete event. In defamation cases involving similar discrete acts of republication of the same material, most courts have rejected the "continuing violation" theory, adopting instead a "single publication rule"[23] and considering the republication of the same defamatory material to constitute "but one tort."[24] In addition to "considerations of convenience and administration," the single-publication rule is justified on the ground that the

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[22] 392 U.S. 481, 88 S.Ct. 2224, 2236 n. 15, 20 L.Ed.2d 1231 (1968). *See also Polin v. Dun and Bradstreet, Inc.* 511 F.2d 875, 878 (10th Cir. 1975): *Baker v. F & F Investment*, 420 F.2d 1191, 1200 (7th Cir.1970); *Katz v. N.I.R.B.*, 196 F.2d 411, 415 (9th Cir.1952); *Postow v. Oriental Building Assoc.* 390 F.Supp. 1130, 1139 (D.C. Dist.1975). *But see Balwin v. Loew's Inc.*, 312 F.2d 387, 390 (7th Cir.1963);*Emich Motors Corp. v. General Motors Corp.*, 229 F.2d 714, 719 (7th Cir.1956).

[23] *Prosser & Keaton, Torts* (5th Ed.) § 113 at 800.

[24] Harper & James, *The Law of Torts* (1956) § 5.16 at 395.

republications are "of passing interests and unlikely to cause substantial harm after their initial impact upon the reading public."[25]

[2] We do not find the rationale underlying the single-publication rule applicable to the Fair Credit Reporting Act. The major harm may, indeed, result from the first transmission of defamatory material to an institution, but the confidential nature of a credit report necessarily means that each new issuance results in a distinct and separate injury. The Restatement of Torts (2d) § 577A appears to diverge from the single-publication rule in its Comment on subsection (1) when it states that "each communication of the same defamatory matter by the same defamer, whether to a new person or to the same person, is a separate and distinct publication, for which a separate cause of action arises." We adopt the Restatement's formulation and conclude that each transmission of the same credit report is a separate and distinct tort to which a separate statute of limitations applies. The failure of the consumer to mitigate his damages by filing suit when he is first injured, thus permitting a more wide-spread circulation of the credit information, should have a "bearing [only] on the [calculation of] damages."[26]

If Hyde was, indeed, injured in 1983, the 1983 and 1986 injuries constituted two distinct harms: Hyde would have been denied a particular credit in 1983 and denied yet another line of credit in 1986. While each injury resulted from Chilton's transmission of the same erroneous credit files, Chilton's later action inflicted a new injury on Hyde.

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25 *Ibid.*

26 *Prosser & Keaton, Torts* (5th Ed.) § 113 at 800.

V.

In its brief, the bank contends only that the FCRA statute of limitations bars an action against it, urging essentially the same reasons as those advanced by Chilton. The facts in the record before us do not indicate whether or not the Bank took any action after its initial report. Moreover, the Bank has not raised, either in the district court or in its brief to this court, any question concerning whether the FCRA creates a cause of action against it. We, therefore, reverse the summary judgment in favor of the Bank for the same reasons that require reversal of the judgment in favor of Chilton, without prejudice to any other defenses the Bank might raise on remand.

For these reasons, we VACATE the judgment of the district court and REMAND the case for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

WEELAND L. HYDE — Filed Apr 11 1988

VERSUS — NO. 87-3328

HIBERNIA NATIONAL BANK IN JEFFERSON PARISH and CREDIT BUREAU SERVICES - NEW ORLEANS d/b/a CHILTON CORPORATION — SECTION "C" (1)

****

J U D G M E N T

This Court has dismissed plaintiff's federal claims against Credit Bureau Services - New Orleans d/b/a Chilton Corporation by way of Minute Entry dated February 24, 1988 and dismissed the federal claims against Hibernia National Bank in Jefferson Parish along with the pendant state claims in a Minute Entry dated April 6, 1988.

Accordingly, JUDGMENT is hereby rendered in favor of detendants, Hibernia National Bank in Jefferson Parish and Credit Bureau Services - New Orleans d/b/a Chilton Corporation, and against the plaintiff, Weeland L. Hyde, dismissing all claims with prejudice, each party to bear its own costs.

New Orleans, Louisiana, this the 11th day of April, 1988.

/s/ Loretta G. Whyte
LORETTA G. WHYTE, CLERK OF COURT

APPROVED AS TO FORM:

/s/ Robert F. Collins
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY APR 15 1988

MINUTE ENTRY
February 24, 1988 FILED FEB 25 1988
COLLINS, J.

WEELAND L. HYDE

VERSUS NO. 87-3328

HIBERNIA NATIONAL BANK IN
JEFFERSON PARISH and CREDIT
BUREAU SERVICES - NEW ORLEANS
d/b/a CHILTON CORPORATION SECTION "C" (1)

****

Defendant, Credit Bureau Services - New Orleans, d/b/a Chilton Corporation (hereinafter referred to as "Chilton"), has moved for summary judgment dismissing plaintiff's claims against it. Chilton alleges that plaintiff's claims against it for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, have prescribed. the Fair Credit Reporting Act statute of limitations provides as follows:

> An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which liability arises, except that where a defendant has materially and willfully misrepresented any information required under the subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

Fair Credit Reporting Act, 15 U.S.C. § 1681p.

Factual Background

On October 13, 1980, First Metropolitian Bank (Hibernia) [1] submitted a voluntary report to Chilton indicating that a commercial loan in the name of Weeland L. Hyde had been charged to "P&L." Subsequently, in November of 1983, Hyde received a copy of his credit report from Chilton setting forth the information which had been submitted from First Metropolitan Bank (Hibernia) in its voluntary report. (*See* Deposition of Hyde, pp. 36, 47, 82-83; *see also,* Credit Report of November 14, 1983.) the credit report received by Hyde in November, 1983 contained a credit entry under First Metropolitan Bank (Hibernia) indicating that Hyde had a commercial loan with an outstanding balance of $452.00 which had been charged to "P&L." (*See* Deposition of Hyde, p. 47; *see also,* Credit Report of November 14, 1983.) After receipt of his credit report in 1983, Hyde called Chilton by phone regarding the First Metropolitan Bank (Hibernia) credit information. (*See* Deposition of Hyde, p. 83). Chilton then informed Hyde that to question credit information under the Fair Credit Reporting Act, he would have to lodge a written request. Hyde did not file a written request and chose not to follow the necessary procedures since "it really wasn't that important to [him] at the time." (*See* Deposition of Hyde, p. 83.) As Hyde himself concedes, "*I just didn't do anything about it.*" (*See* Deposition of Hyde, p. 67.)

More than three years after the receipt of his credit

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[1] In 1983, Hibernia National Bank was then called First Metropolitan Bank. *See* Answer of Hibernia National Bank of Jefferson Parish, ¶ XVII.

report in 1983, Hyde received another copy of his credit report in December of 1986. (*See* Deposition of Hyde, p. 38.) The credit report, dated December 26, 1986, contains the exact same credit information under First Metropolitan Bank (Hibernia) as set forth in the voluntary report which had been supported by First Metropolitan in 1980 *and* as set forth in the 1983 credit report, namely, that Hyde had a commercial loan which had been charged to "P&L." (*See* December 26, 1986 credit report; *see also,* November 14, 1983 credit report; *see* voluntary report submitted by First Metropolitan Bank (Hibernia) in October of 1980.) Hyde's receipt of his credit report in December of 1986 was prompted by correspondence directed to Chilton by Hyde in November of 1986, whereby he disputed the credit information listed under Hibernia (First Metropolitan Bank) for the very first time.

The crux of Hyde's claim against Chilton is that Chilton willfully failed to comply with the Fair Credit Reporting Act by reporting that a commercial loan in his name at First Metropolitan Bank (Hibernia) had been charged to P&L. Yet, Hyde's own testimony reveals that he knew that the Hibernia credit information was being reported as early as November, 1983. (*See* Deposition of Hyde, pp. 36, 47, 82-83.) The case law makes it clear that under *either* the so-called "occurrence rule" or the "discovery rule," Hyde's claim against Chilton has prescribed as a matter of law.

Lawhorn v. Trans Union Credit Information Corp., 515 F. Supp. 19 (E.D. Ma. 1981), established the "occurrence rule," whereby the issuance of the erroneous credit report triggers the applicable statute of limitations (two years under the Fair Credit Reporting Act). Plaintiff's counsel argues that the November, 1983 Report provided Hyde was not an issuance of a "Consumer Report" under the definition of 15 U.S.C. § 1681a and that,therefore, the

second 1986 report is the "occurrence" from which the statute of limitations should run. Plaintiff's attorney claims that the plaintiff obtained this information for his own purposes. Section 1681b of the Fair Credit Reporting Act defines "other purposes" for which a report can be issued and still come within the definition under 15 U.S.C. § 1681a(3) of a "consumer report." One permissible purpose of a consumer report is the issuance of such a report "In accordance with the written instructions of the consumer to whom it relates." Therefore, if the plaintiff himself had obtained this report by *written* request (which is the only permissible manner in which Chilton could have issued the report to Hyde), it would still fit the definition of a consumer report.

On the other hand, the plaintiff himself states in his deposition that he does not know why a copy of the report was sent to him. (Hyde's Deposition, p. 38). Yet, he admits that the letter from Chilton, headed "Dear Homebuyer," accompanied the November, 1983 report. This letter clearly sets forth Chilton's purpose in issuing the report. The letter states that "*In connection with the processing of your home loan* application, your lender sometimes has questions regarding your credit report."

> Dear Homebuyer:
>
> In connection with the processing of your home loan application, your lender sometimes has questions regarding your credit report. If this occurs, we have enclosed a copy of your credit report to assist you in answering these questions. Hopefully, this will eliminate any additional time in processing your application.

Clearly, Chilton collected the information in the report and issued it for the purpose of assisting a potential lender to process the plaintiff's loan application. Regardless of

whether the report was actually used to obtain credit, if the reporting agency collected the information for one of the purposes in § 1681a(d), the document is a "consumer report." *Houghton v. New Jersey Mfrs. Ins. Co.*, 615 F. Supp. 299 (D.C. Pa. 1985). As the attached letter indicates, Chilton issued the report to a potential lender to establish the plaintiff's eligibility for a home loan. Arguments of plaintiff's counsel, by unsupported affidavit or documentation, will not be allowed to controvert the plaintiff's own testimony by way of deposition that he was unsure why he received the report but that, accompanying the report was a letter of explanation. This letter clearly establishes the document as a "consumer report" within the definition of 15 U.S.C. § 1681a(d).

Therefore, this Court finds it undisputed that the November, 1983 document was a consumer report, the issuance of which constitutes an "occurrence" within the meaning of *Lawhorn*. Since the report was issued more than two years prior to plaintiff's filing any claim against defendant, Chilton, plaintiff's claims based on negligent misrepresentation are barred.

Finally, addressing plaintiff's claims for willful and intentional misrepresentation, this Court finds it undisputed that plaintiff was aware that Chilton was reporting that Hyde had a past due account with First Metropolitan Bank (Hibernia) which was charged to "P&L." Indeed, the unrefuted facts and plaintiff's own testimony indicate that plaintiff not only received the credit report containing the Hibernia credit information in 1983, but also, that he questioned the informatiion with Chilton at that time by telephone. (*See* Deposition of Hyde, p. 83.) Accordingly, under the "discovery rule," plaintiff's claims are also time barred, since suit was not filed until more than two years after plaintiff's discovery of the

allegedly willful misrepresentation. *See Houghton v. Insurance Crime Prevention Institute*, 795 F.2d 322 (3d Cir. 1986).

In consideration of the foregoing, defendant's motion for summary judgment is hereby GRANTED, plaintiff's claims to be dismissed accordingly by order of this Court.

/s/ Robert F. Collins
UNITED STATES DISTRICT JUDGE

MINUTE ENTRY
April 6, 1988
COLLINS, J.

FILED APR 11 1988

WEELAND L. HYDE

VERSUS

HIBERNIA NATIONAL BANK IN JEFFERSON PARISH and CREDIT BUREAU SERVICES - NEW ORLEANS d/b/a CHILTON CORPORATION

NO. 87-3328

SECTION "C" (1)

****

Hibernia National Bank in Jefferson Parish (Hibernia), defendant in the above captioned matter, has moved the Court to grant summary judgment and to dismiss for lack of jurisdiction.

Hibernia alleges that plaintiff's claims against it for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, have prescribed. The Fair Credit Reporting Act statute of limitations provides as follows:

> An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which liability arises, except that where a defendant has materially and willfully misrepresented any information required under the subchapter to be disclosed to an in-

DATE OF ENTRY APR 11 1988

> dividual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

Fair Credit Reporting Act, 15 U.S.C. § 1681p.

Factual Background

On October 13, 1980, First Metropolitan Bank (Hibernia)[1] submitted a voluntary report to Chilton indicating that a commercial loan in the name of Weeland L. Hyde had been charged to Profit & Losses ("P&L"). Subsequently, in November of 1983, Hyde received a copy of his credit report from Chilton setting forth the information which had been submitted from First Metropolitan Bank (Hibernia) in its voluntary report. (*See* Deposition of Hyde, pp. 36, 47, 82-83; *see also,* Credit Report of November 14, 1983.) The credit report received by Hyde in November, 1983 contained a credit entry under First Meteropolitan Bank (Hibernia) indicating that Hyde had a commercial loan with an outstanding balance of $452.00 which had been charged to "P&L."(*See* Deposition of Hyde, p. 47; *see also,* Credit Report of November 14, 1983.) After receipt of his credit report in 1983, Hyde called Chilton by phone regarding the First Metropolitan Bank (Hibernia) credit information. (*See* Deposition of Hyde, p. 83.) Chilton then informed Hyde that to question credit information under the Fair Credit Reporting Act, he would have to lodge a written request. Hyde did not file a written request and chose not to follow the necessary procedures since "it really

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[1] In 1983 Hibernia National Bank was then called First Metropolitan Bank. *See* Answer of Hibernia National Bank of Jefferson Parish, ¶ XVII.

wasn't that important to [him] at the time." (*See* Deposition of Hyde, p. 83.) As Hyde himself concedes, "I just didn't do anything about it." (*See* Deposition of Hyde, p. 67.)

More than three years after the receipt of his credit report in 1983, Hyde received another copy of his credit report in December of 1986. (*See* Deposition of Hyde, p. 38.) The credit report, dated December 26, 1986, contains the exact same credit information under First Metropolitan Bank (Hibernia) as set forth in the voluntary report which had been supported by First Metropolitan in 1980 *and* as set forth in the 1983 credit report, namely, that Hyde had a commercial loan which had been charged to "P&L." (*See* December 26, 1986 credit report; *see also,* November 14, 1983 credit report; *see* voluntary report submitted by First Metropolitan Bank (Hibernia) in October of 1980.) Hyde's receipt of his credit report in December of 1986 was prompted by correspondence directed to Chilton by Hyde in November of 1986, whereby he disputed the credit information listed under Hibernia (First Metropolitan Bank) for the very first time.

Plaintiff's Fair Credit Reporting Act Claim

The crux of Hyde's claim against Chilton and Hibernia is that Chilton and Hibernia willfully failed to comply with the Fair Credit Reporting Act by reporting that a commercial loan in his name at First Metropolitan Bank (Hibernia) had been charged to "P&L."Yet, Hyde's own testimony reveals that he knew that Hibernia credit information was being reported as early as November, 1983. (*See* Deposition of Hyde, pp. 36, 47, 82-83). The case law makes it clear that under *either* the so-called "occurrence rule" or the "discovery rule," Hyde's claim against both Chilton and Hibernia has prescribed as a matter of law.

Lawhorn v. Trans Union Credit Information Corp., 515 F. Supp. 19 (E.D. Ma. 1981), established the "occurrence rule," whereby the issuance of the erroneous credit report triggers the applicable statute of limitations (two years under the Fair Credit Reporting Act). Plaintiff's counsel argues that the November, 1983 Report provided Hyde was not an issuance of a "Consumer Report" under the definition of 15 U.S.C. § 1681a and that, therefore, the second 1986 report is the "occurrence" from which the statute of limitations should run. Plaintiff's attorney claims that the plaintiff obtained this information for his own purposes. Section 1681b of the Fair Credit Reporting Act defines "other purposes" for which a report can be issued and still come within the definition under 15 U.S.C. § 1681a(3) of a "consumer report." One permissible purpose of a consumer report is the issuance of such a report "In accordance with the written instructions of the consumer to whom it relates." Therefore, if the plaintiff himself had obtained this report by *written* request (which is the only permissible manner in which the defendants could have issued the report to Hyde), it would still fit the definition of a consumer report.

On the other hand, the plaintiff himself states in his deposition that he does not know why a copy of the report was sent to him. (Hyde's Deposition, p. 38.) Yet, he admits that the letter from Chilton, headed "Dear Homebuyer," accompanied the November, 1983 report. This letter clearly sets forth Chilton's purpose in issuing the report. The letter states that "*In connection with the processing of your home loan* application, your lender sometimes has questions regarding your credit report."

Dear Homebuyer:

In connection with the processing of your home

> loan application, your lender sometimes has questions regarding your credit report. If this occurs, we have enclosed a copy of your credit report to assist you in answering these questions. Hopefully, this will eliminate any additional time in processing your application.

Clearly, Chilton collected the information in the report and issued it for the purpose of assisting a potential lender to process the plaintiff's loan application. Regardless of whether the report was actually used to obtain credit, if the reporting agency collected the information for one of the purposes in § 1681a(d), the document is a "consumer report." *Houghton v. New Jersey Mfrs. Ins. Co.*, 615 F. Supp. 299 (D.C. Pa. 1985). As the attached letter indicates, Chilton issued the report to a potential lender to establish the plaintiff's eligibility for a home loan. Arguments of plaintiff's counsel, by unsupported affidavit or documentation, will not be allowed to controvert the plaintiff's own testimony by way of deposition that he was unsure why he received the report but that, accompanying the report was a letter of explanation. This letter clearly establishes the document as a "consumer report" within the definition of 15 U.S.C. § 1681a(d).

Therefore, this Court finds it undisputed that the November, 1983 document was a consumer report, the issuance of which constitutes an "occurrence" within the meaning of *Lawhorn*. Since more than two years lapsed after the plaintiff received the report and prior to plaintiff filing any claim against the defendants, Chilton and Hibernia, plaintiff's claims based on negligent misrepresentation are barred.

Finally, addressing plaintiff's claims for willful and intentional misrepresentation, this Court finds it undisputed that plaintiff was aware that Chilton was report-

ing that Hyde had a past due account with First Metropolitan Bank (Hibernia) which was charged to "P&L." Indeed, the unrefuted facts and plaintiff's own testimony indicate that plaintiff not only received the credit report containing the Hibernia credit information in 1983, but also, that he questioned the information with Chilton at that time by telephone. (*See* Deposition of Hyde, p. 83.) Accordingly, under the "discovery rule," plaintiff's claims are also time barred, since suit was not filed until more than two years after plaintiff's discovery of the allegedly willful misrepresentation. *See Houghton v. Insurance Crime Prevention Institute,* 795 F.2d 322 (3d Cir. 1986).

Under the doctrine of pendant jurisdiction, a federal court has the constitutional authority to entertain a state law claim provided it is closely related to plaintiff's federal claim. *United Mine Workers of America v. Gibbs,* 383 U.S. 715, 86 S.Ct. 1130, 16 L. Ed. 2d 218 (1966). It is certain,, however, that a district court has wide discretion to refuse to hear a pendant claim. In *Gibbs,* the Supreme Court identified certain circumstances that should influence a court to dismiss a state claim: "Certainly, if the federal claims are dismissed before trial, even though not in substantially a jurisdictional sense, the state claim should be dismissed as well." *Id.* at 726, 86 S.Ct. at 1139. *See United States, Etc., v. Capetti Bros., Inc.,* 621 F.2d 1309 (1980). The instant case presents such a situation.

Initially, this Court exercised pendant jurisdiction over plaintiff's state cause of action (the alleged breach of contract) on the premise that the federal claim (the FCRA cause of action) would proceed in a normal fashion. However, now that the defendants have brought to the attention of the Court that the FCRA claim has prescribed, there is no compelling reason for this Court to entertain a

ruling on a purely state claim. "Federal courts should not be overeager to hold onto the determination of issues that might be more appropriately left to settlement in state court litigation merely because they have 'jurisdiction' to do so by virtue of a complaint making an unfounded claim of federal right." *Wham-O-Mfg. Co. v. Paradise Manufacturying Co.*, 327 F.2d 748 (1964). Accordingly, upon dismissal of the federal claim, this Court no longer has jurisdiction over the pendant state claim. Thus, the motion to dismiss this state claim should be GRANTED.

Consequently, this dispostion renders unnecessary a ruling on the defendant's second motion for summary judgment on the alleged breach of contract claim.

While the plaintiff's FCRA claim against the defendants is dismissed with prejudice because it is prescribed, plaintiff's breach of contract claim is dismissed without prejudice.

/s/ Robert F. Collins
UNITED STATES DISTRICT JUDGE

APPENDIX C

§ 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to

whom the request was made and such person makes the disclosures to the consumer required under section 168lm of this title.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for

the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(Pub L. 90-321, Title Vi, § 603, as added Pub. L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

§ 1681e. Compliance procedures

(a) Every reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(Pub.L. 90-321, Title VI, § 607, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.)

§ 1681n. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub L. 90-321, Title VI, § 616, as added Pub. L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681o. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub.L. 90-321, Title VI, § 617, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liablity created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

(Pub L. 90-321, Title Vi, § 618, as added Pub. L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

APPENDIX D

CHILTON **CREDIT REPORTING**
A Division of the Chilton Corporation

DEPOSITION
EXHIBIT
11

Dear Homebuyer:

In connection with the processing of your home loan application, your lender sometimes has questions regarding your credit report. If this occurs, we have enclosed a copy of your credit report to assist you in answering these questions. Hopefully, this will eliminate any additional time in processing your application.

PLEASE DO NOT CONTACT YOUR LENDER, they will be in touch with you if they have any questions.

Sincerely,

CHILTON CREDIT REPORTING

:ft

REPORTING BUREAU

CHILTON CREDIT REPORTING
NEW ORLEANS
110 VETERANS BLVD.,
ANNEX BLDG., 200A
METAIRIE, LA 70005

CONFIDENTIAL CREDIMATIC
REPORT TYPE

CONSUMER FILE
JOINT INQUIRY
JOINT ID 101-1768985

BUREAU NUMBER	DATE RECEIVED	DATE ISSUED
90-20700	11/11/83	11/11/83

INQUIRER

101-89----2

CONSUMER RELATIONS
110 VETERANS ANNEX 200A
METAIRIE, LA 70005

DATE TRADE CLEARED	DATE EMP VER MO/YR	INCOME VERIFIED
— —	UNAB VER	YES [ ] [X] NO

THIS INFORMATION, THE COMPLETE ACCURACY OF WHICH IS NOT GUARANTEED HAS BEEN OBTAINED FROM RELIABLE SOURCES AND IS FURNISHED PURSUANT TO THE TERMS OF APPLICABLE LAW THE RECIPIENT AGREES TO INDEMNIFY REPORTING BUREAU FOR ANY DAMAGE ARISING FROM MISUSE OF THIS INFORMATION.

FILE SINCE (MO. YR)	COMPUTER I.D. NO.	SOCIAL SECURITY NO.
04/79	101-22223416	437-58-4592

SUBJECT
HYDE, HOLLIE LANDINI

SPOSE'S NAME
WEELAND

CURRENT ADDRESS
4232 WILLIAMS BLVD. #105, KENNER, LA 70062

S10/83

COMPLETE TO HERE FOR TRADE REPORT AND SKIP TO CREDIT HISTORY

PRESENT EMPLOYER:	POSITION HELD:	SINCE:(Mo.Yr.)	MONTHY INCOME:
UNEMPLOYED	HOUSEWIFE	-	$ —

COMPLETE TO HERE FOR EMPLOYMENT AND TRADE REPORT AND SKIP TO CREDIT HISTORY

DATE OF BIRTH: (Mo.Yr.)	NUMBER OF DEPENDANTS INCLUDING SELF ⟶ ···		
-		[-] OWNS OR BUYING HOME	[ ] RENTS HOME

FORMER ADDRESS:	FROM(Mo.Yr.)	TO(Mo.Yr.)
1513 COLONY, METAIRIE, LA.	00/79	

FORMER EMPLOYER:	POSITION HELD:	FROM (Mo.Yr.)	TO (Mo.Yr.)	MONTHY INCOME:
NONE REPORTED				$
SPOSE'S EMPLOYER	POSITION HELD:		SINCE (Mo.Yr.)	MONTHY INCOME:
...				$

CREDIT HISTORY

E C O A	FIRM NAME KIND OF BUSINESS AND ID CODE	DATE REPORTED AND METHOD OPENED	DATE ACCOUNT OPENED	DATE OF LAST CUSTOMER CREDIT	HIGHEST

CURRENT STATUS			HISTORICAL STATUS				
BALANCE OWING	PAST DUE AMOUNT	PAST DUE No. PMT	MOS REV.	PAST DUE 30/60/90+ OR MONTHY PAYMENTS LATE PRIOR TO DATE REPORTED 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	TYPE TERMS CURRENT STATUS	A T T N

TRANSCRIPT OF CREDIT INFORMATION MAINTAINED UNDER COMPUTER I D NUMBER SHOWN AS OF DATE ISSUED PER THE ABOVE NAMED CONSUMER'S REQUEST

INQUIRIES LAST TWO YEARS

DES=4 MBR CONSUMER REL	11/11/83
DES=4 MBR HARRIS MORTG	11/11/83
DES=4 MBR FIRST BC CTR	10/12/83
DES=4 MBR GULF FED SAV	03/21/83

END OF REPORT
11/11/83 16H 14M TERM 311

REPORTING BUREAU

CHILTON CREDIT REPORTING
NEW ORLEANS
110 VETERANS BLVD.,
ANNEX BLDG., 200A
METAIRIE, LA 70005

CONFIDENTIAL CREDIMATIC
REPORT TYPE

CONSUMER FILE
JOINT INQUIRY
JOINT ID 101-22223416

BUREAU NUMBER	DATE RECEIVED	DATE ISSUED
90-20700	11/11/83	11/14/83

INQUIRER

101-89----2

CONSUMER RELATIONS
110 VETERANS ANNEX 200A
METAIRIE, LA 70005

DATE TRADE CLEARED	DATE EMP VER MO/YR	INCOME VERIFIED
SEE BELOW	UNAB VER	YES [ ] X NO

THIS INFORMATION, THE COMPLETE ACCURACY OF WHICH IS NOT GUARANTEED HAS BEEN OBTAINED FROM RELIABLE SOURCES AND IS FURNISHED PURSUANT TO THE TERMS OF APPLICABLE LAW THE RECIPIENT AGREES TO INDEMNIFY REPORTING BUREAU FOR ANY DAMAGE ARISING FROM MISUSE OF THIS INFORMATION.

FILE SINCE (MO. YR)	COMPUTER I.D. NO.	SOCIAL SECURITY NO.
01/64	101-1768985	434-52-2887

SUBJECT
HYDE, WEELAND L

SPOSE'S NAME
HOLLIE

CURRENT ADDRESS
4232 WILLIAMS BLVD. #-105, KENNER, LA 70062

S10/83

COMPLETE TO HERE FOR TRADE REPORT AND SKIP TO CREDIT HISTORY

PRESENT EMPLOYER:	POSITION HELD	SINCE:(Mo.Yr.)	MONTHY INCOME:
HYDE CONSTRUCTION CORP	OWNER PRES.	10/65	$ —

COMPLETE TO HERE FOR EMPLOYMENT AND TRADE REPORT AND SKIP TO CREDIT HISTORY

DATE OF BIRTH: (Mo.Yr.) -

NUMBER OF DEPENDANTS INCLUDING SELF ⟶ ...

[-] OWNS OR BUYING HOME [ ] RENTS HOME

FORMER ADDRESS:	FROM(Mo.Yr.)	TO(Mo.Yr.)
1513 COLONY, METAIRIE, LA.	00/79	

FORMER EMPLOYER:	POSITION HELD:	FROM (Mo.Yr.)	TO (Mo.Yr.)	MONTHY INCOME:
NONE REPORTED				$
SPOSE'S EMPLOYER	POSITION HELD:		SINCE (Mo.Yr.)	MONTHY INCOME:
...				$

CREDIT HISTORY

E C O A	FIRM NAME KIND OF BUSINESS AND ID CODE	DATE REPORTED AND METHOD OPENED	DATE ACCOUNT OPENED	DATE OF LAST CUSTOMER CREDIT	HIGHEST

CURRENT STATUS			HISTORICAL STATUS				
BALANCE OWING	PAST DUE AMOUNT	PAST DUE No. PMT	MOS REV.	PAST DUE 30/60/90+ OR MONTHY PAYMENTS LATE PRIOR TO DATE REPORTED 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	TYPE TERMS CURRENT STATUS	A T T N

TRANSCRIPT OF CREDIT INFORMATION MAINTAINED UNDER COMPUTER I D NUMBER SHOWN AS OF DATE ISSUED PER THE ABOVE NAMED CONSUMER'S REQUEST

1 FIRST METRO 11/83M 06/80 10/80 20K 452 452 -
-SEE COMMENT I *
BB #81236674
RMKS-COMMERCIAL LOAN
COMMENT-CHARGED TO P&L

1 HOLMES D H 03/83Z 10/80 789 00 - R&91
D– -36 SEE COMMENT *378199046
DISPUTE-10/80-FCBA DISPUTE RESOLVED-NO PAYMENT RECORD

CONTINUED NEXT PAGE

TRANSCRIPT OF CREDIT INFORMATION MAINTAINED UNDER COMPUTER I D NUMBER SHOWN AS OF DATE ISSUED PER THE ABOVE NAMED CONSUMER'S REQUEST (continued)

1	HIBERNIA NAT	03/83Z 07/80 3861 00 00 -24	
	I&107	#20523162 000000000000 000000000000	
1	GODCHAUX	08/83A 04/64 07/81 290 00 00 - 17	R
		#378199046 000-0---000 0-0-000000000	
1	FIRST BC CTR BC	07/79A 04/73 02/79 370 00 00 - 10	R
		#4625110171345	
0	SEARS ROEBUCK DC	08/83A 11/75 07/83 544 227 00 - 24 000000000100	r&14
		#3694644852516 000000011121	

MISCELLANEOUS INFORMATION-11/83 GULF FED SV #200024068 INVALID ACCT NUMBER

MISCELLANEOUS INFORMATION-11/83 REF VISA MERRILL LYNCH REFUSES INFO

INQUIRIES LAST TWO YEARS

DES=1 MBR CONSUMER REL	11/11/83
DES=1 MBR HARRIS MORTG	11/11/83
DES=1 MBR LUMBER PROD	08/30/83
DES=4 MBR GULF FED SAV	03/21/83
DES=1 MBR BANK SOUTH	02/01/83

END OF REPORT

11/14/83 08H 57M TERM 30F

REPORTING BUREAU

CHILTON CREDIT REPORTING
NEW ORLEANS
110 VETERANS BLVD.,
ANNEX BLDG., 200A
METAIRIE, LA 70005

CONFIDENTIAL CREDIMATIC
REPORT TYPE

CONSUMER FILE
JOINT INQUIRY
JOINT ID 101-22223416

BUREAU NUMBER	DATE RECEIVED	DATE ISSUED
	12/26/86	12/26/86

INQUIRER

101-89----2

CONSUMER RELATIONS
110 VETERANS ANNEX 200A
METAIRIE, LA 70005

DATE TRADE CLEARED	DATE EMP VER MO/YR	INCOME VERIFIED
SEE BELOW	UNAB VER	YES [ ] [X] NO

THIS INFORMATION, THE COMPLETE ACCURACY OF WHICH IS NOT GUARANTEED HAS BEEN OBTAINED FROM RELIABLE SOURCES AND IS FURNISHED PURSUANT TO THE TERMS OF APPLICABLE LAW THE RECIPIENT AGREES TO INDEMNIFY REPORTING BUREAU FOR ANY DAMAGE ARISING FROM MISUSE OF THIS INFORMATION.

FILE SINCE (MO. YR.)	COMPUTER I.D. NO.	SOCIAL SECURITY NO.
01/64	101-46641544	434-52-2887

SUBJECT
HYDE, WEELAND L

SPOSE'S NAME
HOLLIE

CURRENT ADDRESS
702 CARMENERE,
METAIRIE, LA 70003

S09/86

COMPLETE TO HERE FOR TRADE REPORT AND SKIP TO CREDIT HISTORY

PRESENT EMPLOYER:	POSITION HELD:	SINCE:(Mo.Yr.)	MONTHY INCOME:
HYDE CONSTRUCTION CORP	OWNER PRES.	12/66	$ —

COMPLETE TO HERE FOR EMPLOYMENT AND TRADE REPORT AND SKIP TO CREDIT HISTORY

DATE OF BIRTH: (Mo.Yr.) BY 39	NUMBER OF DEPENDANTS INCLUDING SELF ... → ...	[–] OWNS OR BUYING HOME	[ ] RENTS HOME

FORMER ADDRESS:	FROM(Mo.Yr.)	TO(Mo.Yr.)
1513 COLONY, METAIRIE, LA.	12/80	

FORMER EMPLOYER: NONE REPORTED	POSITION HELD:	FROM (Mo.Yr.)	TO (Mo.Yr.)	MONTHY INCOME: $
SPOSE'S EMPLOYER ...	POSITION HELD:	SINCE (Mo.Yr.)		MONTHY INCOME: $

CREDIT HISTORY

E C O A	FIRM NAME KIND OF BUSINESS AND ID CODE	DATE REPORTED AND METHOD OPENED	DATE ACCOUNT OPENED	DATE OF LAST CUSTOMER CREDIT	HIGHEST

CURRENT STATUS			HISTORICAL STATUS				
BALANCE OWING	PAST DUE AMOUNT	No. PMT	MOS REV.	PAST DUE 30/60/90+ OR MONTHY PAYMENTS LATE PRIOR TO DATE REPORTED 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	TYPE TERMS CURRENT STATUS	A T T N

TRANSCRIPT OF CREDIT INFORMATION MAINTAINED UNDER COMPUTER I D NUMBER SHOWN AS OF DATE ISSUED PER THE ABOVE NAMED CONSUMER'S REQUEST

5 HIBER OF JEFF 03/85M 06/80 -- 20K 00 00 ---- SEE COMMENT I *
B3 #81236674
RMKS-COMMERCIAL LOAN
COMMENT-PAID TO P&L ACCOUNT

1 HIBERNIA NAT 03/83Z 07/80 3861 00 00 -24
#20573162 000000000000 I&107
000000000000

1 EASTERN AIRLS 08/84Z 04/76 - - - 1000 00 00 - - 1 0
NA #20073177024505

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CREDIMATIC SYSTEM PLEASE SEE REVERSE
FORM 2000 SIDE FOR EXPLANATORY CODES

TRANSCRIPT OF CREDIT INFORMATION MAINTAINED UNDER COMPUTER I D NUMBER SHOWN AS OF DATE ISSUED PER THE ABOVE NAMED CONSUMER'S REQUEST (continued)

1	GODCHAUX	12/84Z 04/64 07/81 290 00 00 - 24	R
		#378199046 000000000000	
		000000000000	
0	SEARS ROEBUCK	11/86A 11/75 - - 1394 13 00 - 24	r&10
	DC	#3694644852516 0--00--00000	
		MAX DEL 1 03/84 MR=60	

MISCELLANEOUS INFORMATION-11/83 GULF FED SV #200024068 INVALID ACCT NUMBER

MISCELLANEOUS INFORMATION-12/86 COPY MAILED TO SUBJECT 12-26-86 NEW ORLEANS, LA.

INQUIRIES LAST TWO YEARS

DES=1 MBR CONSUMER REL	12/26/86
DES=1 MBR GENERAL MOTOR	12/12/86
DES=1 MBR DINERS CLUB	10/21/86
DES=1 MBR FIRST MAIL BK	10/15/86
DES=1 MBR EQUIFAX SERV	10/10/86

END OF REPORT

CREDIMATIC SYSTEM PLEASE SEE REVERSE
FORM 2000 3/86 SIDE FOR EXPLANATORY CODES

NO. 88-1467

Supreme Court, U.S.
FILED
MAY 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1988

CREDIT BUREAU SERVICES - NEW ORLEANS
D/B/A CHILTON CORPORATION,
Petitioner

VERSUS

WEELAND L. HYDE,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

When does the two year statute of limitations set forth in the Fair Credit Reporting Act, 15 U.S.C. Section 1681, *et seq,* commence to run?

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CREDIT BUREAU SERVICES - NEW ORLEANS
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VERSUS

WEELAND L. HYDE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Weeland L. Hyde, respectfully submits this Brief in opposition to the Petition for Writ of Certiorari filed herein by Credit Bureau Services - New Orleans d/b/a Chilton Corporation (hereinafter referred to as "Chilton").

STATEMENT OF THE CASE

The plaintiff, Weeland L. Hyde (hereinafter referred to as "Hyde") filed an action against Hibernia National Bank of Jefferson Parish (hereinafter referred as "Hibernia") and Chilton alleging that they had violated the Fair Credit Reporting Act by reporting information which they knew to be incomplete and inaccurate. The action was based upon a 1986 credit report issued by Chilton to Diner's

Club. On that 1986 report, there was an entry indicating that an amount had been charged to "P & L" by Hibernia. There is a long history between Hyde and Hibernia involving a loan to a corporation in which Hyde was a twenty-five percent stockholder. Hyde guaranteed the loan. Hyde has filed suit against Hibernia alleging a breach of contract in connection with certain actions taken by the Bank in connection with that loan. The action against the Bank is pending and is not material to this writ application.

Hyde was aware that the Bank had filed unfavorable information in his credit report with Chilton. However, there had been an ongoing dispute between the Bank and Hyde as a result of the loan. Even though he knew that the information was being reported, he did not take any legal action because he had not been denied credit as a result thereof. He had not been injured or damaged in any way by the bad report. However, in 1986 Hyde applied for a credit card from Diner's Club. Diner's Club requested a report from Chilton, which report was transmitted on October 21, 1986. As a result of the information contained in the credit report, Hyde was denied credit by Diner's Club on February 10, 1987.

After being denied credit, Hyde made written demand upon Chilton and Hibernia asking them to correct the information that was being reported in his credit file. Neither Chilton nor Hibernia took any action to make any corrections to Hyde's report.

The Fifth Circuit held that the statute of limitations provided in the Fair Credit Reporting Act begins to run when a report issued to a user causes injury to the consumer. The Court held that the tort is inchoate until the report is transmitted to a user, and thus, the date that the report is transmitted to a potential user is the date that triggers the commencement of the statute of limitations.

Further, the Court found that each new issuance of a credit report results in a distinct and separate injury, and is a distinct and separate tort to which a separate statute of limitations applies.

SUMMARY OF ARGUMENT

The Fair Credit Reporting Act provides a two year statute of limitations from the time that liability arises under the act. The statute does not define when liability arises, and Respondent submits that the statute of limitations should begin to run on the date that a report is transmitted to a user and causes injury to the consumer.

ARGUMENT

The statute of limitations should commence on the date that a report issued by a credit reporting agency causes injury to the consumer.

Section 1681(p) of Title 15 of the United States Code provides as follows:

> An action to enforce any liability created under this title [15 USCS 1681 *et seq.*] may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has

> materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title [15 USCS 1681 *et. seq.*], the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

The statute states that an action to enforce liability must be brought within two years from the date on which liability arises. Nowhere in the statute does it define when liability arises. Therefore, the question before this Court is that of when the statute of limitations commences to run.

In its Petition for a Writ of Certiorari, Chilton misstates the statute. Chilton says that the statute provides for a two year statute of limitations from the time that the credit reporting agency prepares the credit report. However, that is not how the statute is written, and Chilton cites no authority for its position.

Chilton would have this Court believe that there is a conflict in the Circuits on this issue. However, such is not the case. None of the cases cited by Chilton addresses the issue of the date on which the statute of limitations commences. Furthermore, Chilton has argued that the Fifth Circuit has fixed additional requirements on the Fair Credit Reporting Act. That is simply not true. The Fifth Circuit has only defined the date on which the statute of limitations begins, an issue which is not addressed by the statute. Respondent submits that the opinion of the Fifth Circuit is well reasoned, and that there is no reason for this Court to grant writs in this matter.

While it is true that Hyde knew that there was inaccurate information in his credit file as early as 1983, he was never damaged by that information. He had talked to Hibernia and to Chilton about the information, and had complained that it was inaccurate. However, he took no further steps at that time. There is no provision in the Fair Credit Reporting Act allowing him to file suit to demand that the inaccurate information be corrected.

In 1987, the information contained in his credit file resulted in his being denied credit when he applied for a credit card with the Diner's Club. In 1986, Chilton transmitted a credit report to Diner's Club, and on the basis of that report, Hyde was denied a credit card. It was at that point that Hyde was injured.

Hyde submits that liability arose at the time that he was injured by the action of the Defendants. Up until that time, he had not been injured.

> When an unlawful act does not immediately cause the injury sued for, but does so at a subsequent point of time, the plaintiff's cause of action does not accrue until injury has occurred. *Go-Tane Service Stations, Inc. v. Clark Oil & Refining Corporation*, 798 F2d 481, 486 (Em. App. 1986).

The Fair Credit Reporting Act was enacted by Congress to protect the consumer and to require that credit reporting agencies conform to reasonable procedures in their reporting of credit information. To begin the statute of limitations before any credit report is issued would appear to be inconsistent with the statute. Even if the consumer knows that there is erroneous information in a credit agency's files, he has no cause of action in tort until the agency actually injures him. There is no cause of action allowed by the statute simply because a credit reporting

agency has information in its files that is erroneous. No action lies unless the consumer has been damaged. Thus, to hold that the statute of limitations begins to run prior to the time of transmission of a credit report frustrates the whole purpose of a statute of limitations.

Respondent would also like to point out that Section 1681(c) of Title 15 allows a credit reporting agency to report an account charged to profit and loss for seven years. However, if Chilton's interpretation is accepted, the consumer is powerless to take any action against the credit reporting agency more than two years after the agency has received the bad information and placed it in the consumer's credit file. The agency would then be able to issue inaccurate credit reports for five more years and the consumer would be unable to do anything about it. Such a result is ludicrous.

In its Petition, Chilton has cited several cases for its proposition that the statute of limitations begins to run at the time that the credit reporting agency first receives the erroneous information. One case cited by Chilton is that of *Lawhorn v. Trans Union Credit Information Corporation, infra.* However, that case dealt with reports that had been issued to various retailers more than two years prior to the filing of the suit. The Court there also said:

> The preparation of each report without following reasonable procedures would constitute noncompliance with a requirement of the Act, and the date of the report would signal the beginning of the running of the statute of limitations. *Lawhorn v. Trans Union Credit Information Corporation,* 515 F. Supp. 19, 20 (E.D. Mo. 1981).

Thus, that case itself indicated that the statute of limitations would run from the time that each credit report

is issued. A second case submitted by the Petitioner is that of *Houghton v. Insurance Crime Prevention Institute*, 795 F.2d 322 (3rd Cir. 1986). In that case the complaint again was filed more than two years after the Plaintiff was injured. These cases did not deal with the date that the statute of limitations would commence. However, they did recognize that there was a two year statute of limitations.

CONCLUSION

The Respondent submits that there is no split of authority in the Circuit Courts, and that the decision of the Fifth Circuit is based upon sound legal reasoning. It does not extend the Fair Credit Reporting Act as Petitioner would have this Court believe. It is a well-reasoned opinion, and Respondent submits that Chilton's petition for review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served on the 26th day of May, 1989, three copies of the foregoing upon the following, by depositing same in the United States Mail, postage prepaid and properly addressed.

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APR 4 1989

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No. 88-1467

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CREDIT BUREAU SERVICES - NEW ORLEANS,
d/b/a CHILTON CORPORATION,
Petitioner,

vs.

WEELAND L. HYDE,
Respondent.

On Petition For Writ of Certiorari
to the United States Court of Appeals
For the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF ASSOCIATED CREDIT BUREAUS, INC. AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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No. 88-1467

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For the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF ASSOCIATED CREDIT BUREAUS, INC. AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Associated Credit Bureaus, Inc. ("ACB") hereby respectfully moves for leave to file the attached brief as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Credit Bureau Services - New Orleans, doing business as Chilton Corporation ("Chilton"). The consent of the attorney for petitioner Chilton has been obtained. The consent of the attorney for respondent, Weeland L. Hyde, has been requested and has been refused.

As set forth more fully in the Statement Concerning Interest of Amicus Curiae contained in the accompanying Brief, Associated Credit Bureaus is a national non-profit trade association, the members of which are approximately 1,400 credit bureaus throughout the United States.

ACB is concerned that the court below misconstrued the statute of limitations set forth in the Fair Credit Reporting Act, 15 U.S.C. §1681p, in a manner which, if allowed to stand, will undermine the limitations period drafted by Congress. ACB's familiarity with the goals and purposes of the Fair Credit Reporting Act place it in a unique position to contribute to the Court's consideration of the issues presented in the Chilton petition.

For the foregoing reasons, ACB respectfully requests that it be permitted, as *amicus curiae,* to urge that the Petition filed by Chilton be accepted for review.

Respectfully submitted,

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I hereby certify that I have on this 6th day of April, 1989, served three copies of the Motion for Leave to File Brief Amicus Curiae in Support of Petition for Writ of Certiorari upon each of the following, by depositing same in the United States mail, with first-class postage prepaid and properly addressed to the following parties:

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